IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11249 of 2004
with
SPECIAL CIVIL APPLICATION Nos 11207, 11399 & 11400 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANUBHAI CHHAGANBHAI PATEL

Versus

DIRECTOR OF AGRICULTURAL MARKETNG AND RURAL FINANCE

Appearance:
1. Special Civil Application No. 11249 of 2004
MR SHIRISH JOSHI for Petitioner No. 1-8
..... for Respondent No. 1-2,5
MR DILIP B RANA for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 10/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI FOR THE COURT)

1. In Special Civil Application No. 11249 of 2004, the petitioners have challenged the order of the Election Officer made on 3.9.2004 at Annexure:I to the petition, refusing to take the objections against nomination papers into consideration on the ground that they were not submitted in the prescribed time and that they were given only after the nomination papers were declared to be valid when no objections were received. Admittedly, the election process for election of the Agricultural Produce Market Committee, Vadodara has started long ago and voting is to take place on 16th September, 2004.

1.1 In Special Civil Applications Nos. 11399 of 2004 and 11400 of 2004, the petitioners have challenged the rejection of their nomination papers. The Election Officer made a common order on 31.8.2004 on the grounds mentioned in detail in that order rejecting the nomination papers of the petitioners. Voting is scheduled to take place on 13.9.2004 in both the above petitions for election of Siddhpur Market Committee.

1.2 In Special Civil Application No. 11207 of 2004, the petitioner has challenged the order of rejection of his nomination paper made on 4.9.2004 by the Election Officer on the basis of the order made by the High Court on 20.6.2004 in Special Civil Application No. 2164 of 2004, by which, in paragraph-6, it was clarified that as a consequence of the interim order, the petitioner shall not be entitled to contest or to get himself elected as a member of the Market Committee. Admittedly, that order of the High Court had not been challenged by way of an appeal.

2. At the request of the learned counsel made after the hearing of the first matter, the other petitions were also heard together.

3. It was sought to be contended by the learned counsel on behalf of the petitioners that the grounds germane to rejection of the nomination papers under Rule-16 of the Gujarat Agricultural Produce Market Rules, 1965 were not taken into consideration and that in the first case where objections were not considered, there had been failure in the exercise of jurisdiction while in the other cases, where the nominations were rejected, the exercise of power is ultra vires the provisions of Rule-16 of the Act. It was contended that ultra vires or

void order is required to be ignored and if this Court corrects the mistake, it would in fact be acting in furtherance of holding of the elections.

3.1 Reliance was placed on the decision of the learned Single Judge of this Court in Kanjibhai Babaldas Patel v. Election Officer of A.P.M.C., Visnagar, reported in 42 (1) GLR 260, for pointing out that this Court did set aside the order of rejection of the nomination form on 10th March, 2000 when the polling date was 13th March, 2000.

3.2 The learned counsel for the petitioners relied upon the decision of the Division Bench in Mehsana District Cooperative Purchase & Sale Union Ltd., Vs. Dhadusan Beej Utpadak Rupantar and Vechan Karnari Sahkari Mandali Ltd., reported in 1998 (1) G.L.H. 170 to point out that it was held therein that the decision of the Authorised Officer to delete the names of the petitioners from the final voters' list was illegal and opposed to Rule 8(1-A) of the Rules and that if the alternative remedy suggested was illusory and ambiguous, the Court would not hesitate in exercising its extraordinary powers under Article 226 of the Constitution. It was made clear in paragraph-17 of the judgment that in the matter of election, the Court shall exercise this discretion with great caution and circumspection and the election process already initiated by the authorities shall not be altered so lightly to the disadvantage of so many other persons. In that case, the election could be conducted as scheduled, and it was held that the learned Single Judge was justified in granting the reliefs sought for by the respondents.

3.3 Reliance was also placed on the decision of the Supreme Court in Election Commission of India Vs. Ashok Kumar & others, reported in (2000) 8 Supreme Court Cases 216 for the proposition that the jurisdiction of the Court can be invoked where the progress of election proceedings is not interrupted, obstructed or delayed.

4. In view of the efficacious machinery provided in Rule-28 of the said Rules and since the election process is at a very advanced stage, at both the places, we do not find any warrant for interfering with the election processes by entertaining any of these petitions at this stage. In our opinion, entertaining these petitions at this stage would, in view of the procedure involved in hearing of the petitions, and the proximity of the voting dates, have the effect of interrupting, obstructing or protracting the election proceedings. The nature of

issues arising from the decisions of the Election Officers on the acceptance or rejection of nomination papers in all these cases would require inquiring into the questions of facts. In Special Civil Application No. 11207 of 2004, the nomination paper has been rejected in view of the order of the High Court made on 20.6.2002 in Special Civil Application No. 2164 of 2002 to the effect that the petitioner shall not be entitled to contest or get himself elected as a member of the Managing Committee.

5. In the context of Rule 28 of the Gujarat Agricultural Produce Market Rules, 1965, a Division Bench of this Court has held in Patan Proper Fal and Shak Bhaji Kharid Vechan Sahakari Mandli Ltd., Patan Vs. Pali Shak Bhaji and Fal Ful Adi Ugarnaraoni Kharid Vechan Shahkari Mandli Ltd., Mehsana & others, reported in 1986 G.L.H. 430 that this Court should not exercise jurisdiction under Article 226 of the Constitution by interfering with the election process having regard to the recognized principle that election should be conducted as early as possible according to the time schedule and all controversial matters as well as disputes arising out of the election including the right to vote or stand as a candidate should be postponed till after the elections are over so as to avoid impediment or hindrance in the election process. It cannot be disputed that the process of acceptance or rejection of a nomination paper is an election process. Therefore, the ratio of the decision of the Division Bench in Patan Proper Fal and Shak Bhaji Kharid Vechan Shahkari Mandli Ltd. (supra) would squarely apply to cases of rejection or acceptance of nomination papers which is at a very advance stage of the election programme.

5.1 Another Division Bench of this Court in Mehsana District Co-operative Sales and Purchase Union Ltd. & another Vs. State of Gujarat & others reported in 1988 (2) GLR 1060, which was a case where names of 347 persons came to be deleted from the final list of voters, held, in the context of the provisions of Rules 7,8,9, 10 and 28 of the said Rules, that a machinery was provided under Rule 28 for determination of an election dispute which touches the validity of the election, and according to the said Rule, if the validity is questioned after the declaration of the result, it has to be decided by the special forum created by the Rule which has the power to confirm or amend the declared result or set aside the election. It was held that prima facie, the preparation of the lists of voters is a step in the direction of holding of elections so far as the scheme of the Rules is

concerned and that it must be remembered that the right to be included in the voters' list is conferred by statute and must, therefore, be exercised under the statute and not dehors it, and if the statute provides for an efficacious remedy for the enforcement of the right, the High Court would be justified in refusing to exercise jurisdiction under Article 226 of the Constitution.

5.2 In both the above cases before the Division Benches of this Court, the question whether an omission from the voters' list could be interfered with during the process of election was involved and it is in that context that the Court held in both the cases that there was a special remedy available under Rule 28 which ought to be followed and that it would not be appropriate for the Court to exercise its writ jurisdiction under Article 226 at that stage.

5.3 In Akbarbhai Rahimbhai Momin Vs.State of Gujarat and others reported in 2000 (2) GLH 172, it was held by a Division Bench of this Court that a grievance regarding validity of the voters' list can be made under Rule 28 which provided the machinery for determination of an election dispute which touches the validity of an election only after the result of the election is declared. It was held that the law on this aspect in the context of preparation of a voters' list under Rule 28 was, since long, settled by the aforesaid two Division Bench decisions of this Court and that the ratio of those decisions was, in no way diluted by the subsequent decision rendered in Mehsana District Co-op. Purchase & Sales Union Ltd. Vs. Dhadusan Beej Utpadak Rupantar and Vechan Karnari Sahkari Mandali Ltd. reported in 1998 (1) GLH 170.

5.4 The Supreme Court in context of a case of rejection of nomination paper for election as Director of a Co-operative Bank held in Umesh Shivappa Ambi and others Vs. Angadi Shekara Basappa and others, reported in AIR 1999 SC 1566 that, it is now well settled that the Court will not ordinarily interfere with the elections under Article 226 of the Constitution. In Election Commission of India Vs. Ashok Kumar reported in AIR 2000 SC 2977, it has been laid down that, if an election (as the term is widely interpreted), is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completion of the election proceedings.

5.5 When a petition against acceptance or rejection of the nomination paper is entertained, the process of election gets interrupted at an advanced stage. As per the election programme of the APMC Vadodara, election process had started from 28.6.2004 and the date of scrutiny of nominations as per Rule-15 was 3.9.2004. The last date of withdrawal of nominations papers was 6.9.2004 on which date, final list of the contesting candidates was published under Rule 17(2). The date of polling is 16.9.2004. Similarly, for the APMC, Siddhpur, election process commenced as per the programme under the notification dated 19.6.2004 and the date of scrutiny of the nomination papers was 31.8.2004. The last date of withdrawal of nomination papers was 3.9.2004 and the date of polling is 13.9.2004.

5.6 The stages of election are fixed under Rule 10 of the said Rules. The statutory notice fixing stages of election is required to specify under Rule 10(2)(b) the date on which, the place at which & the hours between which nomination papers shall be presented to the Election Officer, and under Clause (c) thereof, the date on which, the place at which and the hours between which the nomination papers shall be scrutinised. Under Rule 11(6), it is provided that nomination papers received after the date and the time appointed under clause (b) of sub-rule (2) of Rule 10, shall be rejected. Under Rule 14, a list in Form II of all nominations received with a notice that the nomination papers shall be scrutinised on the date appointed under clause (c) of sub-rule (2) of Rule 10 at the place and hour notified in the notice is required to be published. By Rule 15, it is provided that on the date fixed for scrutiny of nominations, the Election Officer shall give the candidates one proposer of each candidates and one other person duly authorized in writing by each candidate, reasonable facility for examining the nomination papers of all candidates. By Rule 16, the Election Officer is required to then examine the nomination papers and decide all objections which may be made at the time of scrutiny to any nomination, and may, either on such objection or on his own motion after such summary inquiry, if any, as he thinks necessary, reject nomination on the ground that the proposer is a person whose name is not in the relevant list of voters or that the nomination has not been made in accordance with the Rules. He is required to endorse his decision on each nomination paper accepting or rejecting the same with brief statement of his reasons for rejection. It is specifically provided in Rule 16(2) that the scrutiny shall be completed on the day fixed in this behalf and

shall not be adjourned on any ground. Under Rule 17, any candidate may withdraw his candidature by notice in writing within three days of the date succeeding that fixed for the scrutiny of nominations. Under sub-rule (2) of Rule 17, on completion of the scrutiny of nominations and after the expiry of the period within which candidature may be withdrawn under sub-rule (1), the Election Officer shall prepare a list in Form III of persons, whose nominations are accepted and who have not withdrawn their candidature, not less than seven days before the date, fixed for the election. It will, thus, be seen that the stages of scrutiny of nominations and withdrawal of candidature are strictly time-bound under the statutory rules. If the High Court interferes with the outcome of the scrutiny of nominations, it will have direct effect of disturbing the time schedule statutorily contemplated as aforesaid. For example, when nomination paper is wrongly rejected or accepted and the High Court directs otherwise, the Election Officer will have to file fresh list of nominations accepted, which may directly disturb the date on which such list is required to be statutorily affixed not less than seven days before the date fixed for the election. As soon as the Court enters into the controversy of the validity of nomination papers, by the very nature of the time schedule having been already announced under the statutory rules, there would be every likelihood of interfering with the process of election. Therefore, in the matter of rejection of nominations, it is abundantly clear that entertaining of a petition at such late stage would in no way smoothen the progress of the election proceedings. Any interference after the scrutiny of nominations would create a real possibility of the election process being interrupted, obstructed or delayed. This is why in the aforesaid four Division Bench judgements of this Court, it has been laid down that Rule 28 provides an efficacious remedy and when the election process is started, Court would refuse to exercise its extraordinary jurisdiction. This ratio applies with much more vigour to a case where the stage of scrutiny of nomination is over. We, therefore, cannot subscribe to a view that the Court should go into the nature of the dispute i.e. the objections raised against the validity of the nomination, examine whether any rule is violated and find out whether the Scrutiny Officer had committed an error in rejecting or accepting the nomination. The fact that this process was undertaken by a learned Single Judge of this Court in Kanjibhai Babaldas Patel (supra) would not, by itself, constitute a proposition of law which would apply in the face of the settled legal position emerging from the aforesaid decisions of this Court as also from the

decisions of the Apex Court. The decisions of this Court were directly in the context of the provisions of Rule 28. It is unfortunate that these decisions were not pointed out to the learned Single Judge, who in para-9 of the judgement made the following observations without reference to any of the earlier decisions. The judgment of the learned Single Judge does not indicate whether the judgments of the Division Bench which were binding on the learned Single Judge, including the earliest view reflected in Patan Proper Fal and Shak Bhaji Kharid Vechan Sahakari Mandli Ltd., were cited before His Lordship:

> " 9. The celebrated proposition of law and certain aspects of the law in a situation like the one on hand has been, virtually, very well expounded and extensively explored by catena of judicial pronouncements and both the sides have relied on many decided cases of this Court and the Hon'ble Apex Court."

Nowhere, there is any reference to the ratio of the aforesaid decisions. In paragraph-10, His Lordship has highlighted certain aspects having bearing on the nature of jurisdiction of the High Court under Article 226. In paragraph-13 of the judgment, His Lordship has held in the context of Rule 16 that: "Innovative and ingenious exercise of power and interpretation of Rule 16 by the respondent in rejecting the nomination of the petitioner, in the first petition, connecting with the removal period is not only unsupportable and unacceptable, but is clearly, unauthorised. He cannot make a ground which is not conceived in Rule 16. Rejection of a nomination by an Election Officer in exercise of power under Rule 16 has to be exercised within the provisions of Rule 16 and judiciously." There can be no dispute over the proposition that the Scrutiny Officer has to confine himself to the ambit of his powers under Rule 16. Rule 16 includes the provision which enables the officer to examine whether there is breach of any other rules. Moreover, in a case where there is a direction of a competent Court, as a result of which a particular candidate is disabled from contesting such election, Rule 16 will not enable the Scrutiny Officer to ignore such direction by confining to the grounds mentioned therein, because, he would be bound by the direction of the Competent Court. The question whether decision of the Scrutiny Officer accepting or rejecting the nomination has been validly made under Rule 16, by its very nature, would entail interruption of the election process by entertaining the petition and is, therefore, required to

be postponed for judicial determination till after the election is over. It is, therefore, not possible to treat the decision of the learned Single Judge in Kanjihai Babaldas Patel (supra) as laying down any proposition of law to be followed for interfering with the election process in cases in which it is alleged that the Scrutiny Officer has made an order on a ground not germane under Rule 16. We are of the opinion that the decision in Kanjibhai Babaldas Patel (supra) should not be read as laying down any ratio contrary to the settled legal position emanating from the aforesaid decisions of this Court in the context of Rule 28 of the said Rules and that decision should be confined to the facts of its case.

6. If pick and choose policy is adopted for examining some cases of rejection or acceptance of nomination papers and not others, in face of the proximity of the voting dates, it would amount to circumventing the settled legal position that if an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election in any manner, the invoking of judicial remedy has to be postponed till after the completion of proceedings in elections. [See paragraph 32(1) of the decisions of the Supreme Court in Election Commission of India Vs. Ashok Kumar and others, reported in AIR 2000 SC 2979] Therefore, in face of a genuine possibility of any exercise of extraordinary jurisdiction at this stage causing the effect of interrupting, obstructing or protracting the election proceedings, in our opinion, judicial remedy is required to be postponed in all these matters till after completion of the proceedings in elections in view of the above settled legal position. All these petitions are, therefore, rejected.

[R.K. ABICHANDANI, J.]

[D.H. WAGHELA, J.]

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